THE GEORGE WASHINGTON UNIVERSITY
Washington, DC

MINUTES OF THE REGULAR MEETING OF THE FACULTY SENATE HELD ON APRIL 10, 1998, IN THE ELLIOTT ROOM, UNIVERSITY CLUB, MARVIN CENTER

The last meeting of the 1997-98 Session was called to order by President Trachtenberg at 2:15 p.m.

Present: President Trachtenberg, Registrar Selinsky, and Parliamentarian Pagel; Dean Futrell; Professors Agnew, Boswell, Captain, Granger, Griffith, Gupta, Harrington, Johnston, Kahn, Ludlow, Lynch, Maggs, McAleavey, Robinson, Simon, Smith, Sodaro, Wirtz, and Youens

Absent: Vice President Lehman; Deans Friedenthal, Harding, Kee, Keimowitz, Lefton, Mazzuchi, and Riegelman; Professors Castleberry, Cawley, Harrald, Silber, Slaby, Solomon, and Yezer

A brief recess was called in order for a group photograph to be taken of the Faculty Senate for the 1997-98 Session.

APPROVAL OF THE MINUTES

The minutes of the regular meeting of March 13, 1998, were approved as previously distributed.

INTRODUCTION OF RESOLUTIONS

No resolutions were introduced.

REVIEW OF FACULTY CODE PROVISIONS OF VOTES OF CONFIDENCE FOR ADMINISTRATIVE OFFICIALS BY PROFESSOR GERALD P. JOHNSTON, CHAIR, PROFESSIONAL ETHICS AND ACADEMIC FREEDOM COMMITTEE

On behalf of the PEAF Committee, Professor Johnston said that he did not have much to add to the Report that accompanied the agenda. Basically, he said, the report addresses the question of the propriety of inclusion of votes of confidence procedures in the Faculty Code, and he would be happy to answer any questions anyone might have.

Professor Captain inquired why all the appendices were not included with the Report, and Professor Johnston explained that the initial memorandum from President Trachtenberg was marked "confidential," and it did not seem appropriate to distribute that with the Report, although the points raised by the President were raised in the response of the PEAF Committee.

Professor Griffith stated that the Report was well done, but he was surprised that the Committee decided in the end not to change the votes of confidence procedures. He wondered why the Committee did not move in the direction of perhaps developing more elaborate procedures for providing the administrative official a proper chance to be heard or providing for a periodic review of the administrative official prior to reappointment. Professor Johnston replied that, after reviewing documents from other schools, there did not seem to be much evidence of written documentation of votes of confidence, but that there were a large number of schools that had very elaborate procedures for involvement of the faculty in the reappointment process, which our Faculty Code is silent about. He said that if GW had the latter procedures, then the votes of confidence procedures would have a diminished role or might not be necessary at all, and the Committee felt strongly that this is the direction that should be followed. He noted that a couple years ago the then Chair of the PEAF Committee, Professor Lilien Robinson, had submitted a resolution to the Executive Committee on the role of faculty in the reappointment of academic administrative officials, but it seemed the resolution somehow got lost in the process. Professor Robinson pointed out that the PEAF Committee, during her tenure as Chair, referred the resolution twice to the Executive Committee, but it was turned back to the PEAF Committee by the Executive Committee. Professor Johnston asked Professor Boswell if he could speak to that because he was Chair of the Executive Committee at that time. Professor Boswell said that he could not recall what the reason was for turning it back to the PEAF Committee.

Professor Johnston said that the faculty members of the PEAF Committee were quite uniform in their agreement that there should be specific language developed to amend the Faculty Code to include a provision for faculty involvement in the reappointment of academic administrative officials. Professor Griffith agreed that that was the appropriate direction for the Committee to take because it seemed to him to be partly responsive to the President's concern about the votes of confidence provision.

PRESENTATION AND INFORMATIONAL DISCUSSION OF REVISED UNIVERSITY COPYRIGHT POLICY BY PROFESSOR SHARON LYNCH, CHAIR, RESEARCH COMMITTEE

Professor Lynch, Chair of the Research Committee, said that the rationale for the revised Copyright Policy is that the specifics of copyright law have been changed and therefore the University's policy needed to be updated. The whole issue of electronic publishing has taken us into a new era and has raised a lot of issues regarding copyright policy. Also in 1996 the University adopted a new Patent Policy and the copyright policy needed to be aligned with it. She said that Associate Vice President for Research and Graduate Studies Carol Sigelman and the University Counsel's Office prepared a draft policy which was approved by the Advisory Council on Research. The Senate Research Committee then reviewed the revised policy and forwarded it,

together with a resolution, to the Executive Committee. Professor Lynch then asked the floor for Associate Vice President Sigelman to lead an informal discussion of the policy. Associate Vice President Sigelman said that the guiding objectives in the revised copyright policy were to allow people to own the rights to their intellectual works except when the University has a clear claim; to distinguish more sharply between faculty/librarians and staff; and to update to conform it to copyright law and to make it more compatible with the 1996 Policy on Patents and Scholarly Works. She then distributed a short summary of the revised policy to provide a brief overview of it and she explained how the policy would apply to faculty and librarians, staff, and students. (Summary is attached.)

Professor Griffith asked what the role of the Senate is with regard to the revised policy, and Professor Robinson explained that the Executive Committee will appoint an Ad Hoc Committee to review the policy with instructions to bring it back to the Senate with a resolution for the September 11th Senate meeting.

Professor Griffith said that he would ask the Ad Hoc Committee to address a portion of the policy to which he took strong exception. The passage in question appears on Page 6, Section 3.2 Textbooks and Instructional Materials. He said that this section of the policy appears to give the University sole ownership, not joint, over course materials produced by a faculty member. For example, a part-time faculty member who is teaching one course here and maybe a course at other universities may have developed a substantial portion of his or her course by using slides to show to the students or perhaps puts it on a WEBSITE. According to the policy, this faculty member could not use these slides nor transport this WEB material for use in another course. Professor Griffith said that he found this to be really intrusive upon the rights of the producer -- the faculty member -- of these course materials. Professor Lynch replied that the Research Committee discussed that exact scenario and decided that if it were a WEB-based course, using University resources, then the University should in fact own it. However, the Committee thought that the way out of that situation would be for the adjunct faculty member to arrange as part of his or her contract copyright control for the materials if he or she agreed to teach the course because there are provisions allowing for that. She noted that the resolution drafted by the Committee asks that the copyright policy be referred to in the employment letter so that the faculty member is aware of it. Professor Griffith stressed that, as a minimum, some provision for joint copyright of such materials might be appropriate. This would protect the University's interest in the sense that the person could not then take the course or WEB materials and sell them against the interests of the University without the approval of the joint copyright holder, but the person would not have to have special permission to use his or her own course materials to teach a course elsewhere. Associate Vice President Sigelman noted that the University could give up its ownership when a faculty member leaves, but she agreed that Professor

Griffith raised an important issue. Professor Griffith replied that he would object to leaving it to the benevolence of the University to agree to relinquish its claim.

Professor Harrington said that it was good that an Ad Hoc Committee would be reviewing this document and he recommended that the changes be underlined, not redlined, as it was almost impossible to see what language was new or not in the revised policy.

Professor Kahn then read Section VII.A. of the Policy on Patents and Scholarly Works, Faculty Senate Minutes, Page 7, that states: "All rights in scholarly books, articles, and other publications, artistic creations, literary manuscripts, visual and auditory creations, and musical works, irrespective of their medium of storage or presentation, are granted to the faculty, staff, and students who are the authors, and need not be disclosed. The former items are meant to include computer programs, computer software, and data bases that are accessory to or part of a scholarly text. Computer programs that are written for the primary purpose of educational learning and testing are excluded from classification as Inventions, Discoveries, Technologies, and Innovations." Professor Kahn said that it seemed to him that the proposed Copyright Policy was in direct contradiction to the present excellent Patent Policy. Associate Vice President Sigelman said that she did recognize this particular contradiction and that proposed changes in that part of the Patent Policy were included in the package under consideration. For instance, she said, if a staff person is writing computer programs for G.W. administrative systems, that staff member does not own that work because it is done as part of his or her employment at the University. The staff member does need to disclose it if it is such a "work for hire."

Professor Johnston voiced his concern about the distinction between a textbook and a casebook. Reference was made, he said, to a textbook as being different from a casebook, but in the Law School it does not work that way. Law schools use casebooks, and faculty members publish casebooks that they themselves use, and are also used at other universities. He said that if the policy of the University is that when a faculty member writes something like a casebook, he or she does not own the copyright and is not entitled to royalties, then the end result will be that faculty will not write casebooks, thereby discouraging scholarship instead of encouraging it. Associate Vice President Sigelman asked Professor Johnston if those casebooks would be intended for broader use than just the course, and Professor Johnston replied that was not necessarily so. For example, if he were to write a casebook for Trusts and Estates for use in his class, but then published it, it would be used for other Trusts and Estates courses elsewhere. Associate Vice President Sigelman responded that under her definition it would be a textbook. Professor Johnston said that he thought a distinction has to be made between what would be appropriate for the University to claim ownership rights to in textbooks and casebooks.

Professor Boswell suggested that, as a result of this discussion, serious thought should be given to the amending clause in the policy which gives the Academic Vice President the right to amend in minor or nonsubstantial respects. He said that he did not think that "minor or nonsubstantial respects" were defined well enough to satisfy all people and he urged the Ad Hoc Committee to characterize what that means. The President called upon William F. Howard, Deputy General Counsel, who explained that the kind of change that is intended has to do with periodic changes in people's titles and in the exact names of committees specifically referenced in the policy which could be done without going through the entire process of consulting the Advisory Council on Research, the Faculty Senate Committee on Research, the Faculty Senate, and the Board of Trustees. Professor Griffith recommended that the Faculty Senate Committee on Research also be allowed to propose amendments to the policy.

GENERAL BUSINESS

I. NOMINATION FOR ELECTION OF THE EXECUTIVE COMMITTEE FOR THE 1998-99 SESSION

On behalf of the Nominating Committee, Professor Kahn, Chair, moved the nomination for election of Professor Lilien F. Robinson (CSAS) to serve as Chair of the Executive Committee for the 1998-99 Session for a one-year term. No nominations were made from the floor, and Professor Robinson was elected unanimously. Professor Kahn then moved the nomination for election of the other six members, as follows: Professors Hugh L. Agnew (ESIA), John G. Boswell (GSEHD), Linda L. Gallo (SMHS), Robert J. Harrington (SEAS) Arthur E. Wilmarth, Jr. (GWLS), and Philip W. Wirtz (SBPM). No nominations were made from the floor, and the entire slate was elected unanimously.

II. NOMINATION FOR ELECTION OF FACULTY TO THE DISPUTE RESOLUTION ~~RESOLUTION~~ COMMITTEE

On behalf of the Executive Committee, Professor Robinson moved the nominations for election of the following faculty to the Dispute Resolution Committee for three-year terms commencing May 1, 1998: Professors Robert Brauneis (GWLS), Robert S. Goldfarb (CSAS), Cynthia J. McSwain (SBPM), Ralph O. Mueller (GSEHD), and Carmelita U. Tuazon (SMHS). No nominations were made from the floor and the nominees were elected unanimously. Professor Robinson then moved the nomination for election of Professor Roger E. Schechter as Chair of the Dispute Resolution Committee for a one-year term and as a replacement for Professor Gabaldon, who resigned. No nominations were made from the floor and Professor Schechter was elected unanimously.

III. NOMINATION FOR APPOINTMENT BY THE PRESIDENT TO ADMINISTRATIVE COMMITTEES

On behalf of the Executive Committee, Professor Robinson moved the following nominations for appointment by the President to Administrative Committees: Judicial System: David W. McAleavey (Chair), Neal E. Chalofsky and Ronald Weitzer; University Hearing Board: Prabir K. Bagchi, Carol A. Kochhar, Debra R. Sheldon, and Richard B. Stott; Marvin Center Program Board: Irving J. Katz; Marvin Center Governing Board: Leslie B. Jacobson, Irving J. Katz, Charles E. O'Rear, and Bradley W. Sabelli; Committee on Student Publications: John M. Artz, W. Douglas Maurer, Judith A. Plotz, Yolanda C. Oertel, Jon A. Quitslund, and Frederick Wolff. The entire slate was approved.

IV. REPORT OF THE EXECUTIVE COMMITTEE

The Report of the Executive Committee by Professor Robinson, Chair, is enclosed.

V. (a) ANNUAL REPORT OF THE COMMITTEE ON APPOINTMENT, SALARY AND PROMOTION POLICIES

Professor Boswell, Chair, Committee on Appointment, Salary and Promotion Policies, reported that the ASPP Committee presented two resolutions to the Senate. The first resolution came from a joint ASPP and PEAF subcommittee and dealt with interdisciplinary programs between schools. The second resolution on leave without pay also came from a joint ASPP and PEAF subcommittee. Both resolutions were adopted by the Faculty Senate. Some of the issues under discussion by the Committee are summer sessions compensation, salary differentials of faculty among schools, and part-time faculty utilization and compensation. No decisions have been made with regard to these issues. At the direction of the Executive Committee a subcommittee was formed to consider benefits available to and continued utilization of the services of emeriti faculty, chaired by Professor Emeritus Peter Hill. A resolution will be submitted to the Senate in May. (Annual Report is attached.)

(b) INTERIM REPORT OF THE COMMITTEE ON EDUCATIONAL POLICY

Professor Sodaro, Chair, Committee on Educational Policy, reported that the Committee met on March 31st and discussed several items. One item concerned a document the Committee received from Associate Vice President Sigelman's Task Force on Standards for the Supervision of Dissertations. These are guidelines setting forth standards that are to be followed throughout the University for the supervision and defense of dissertations. He said the Committee approved the document, as received, with the exception of one minor change and sent it back to Associate Vice President Sigelman with thanks for a job well done.

BRIEF STATEMENTS (AND QUESTIONS)

Professor Robinson said that she had received a number of calls from faculty, active-status and emeriti, who are concerned over the reports of GW's consideration of offering an appointment to Mayor Barry. The concern the faculty conveyed to her was that they were worried the University might become politicized in some manner and they asked her to ask the President for any information he might be able to provide. President Trachtenberg replied that, to the best of his knowledge, the University was never considering it, so it was difficult to respond to Professor Robinson's inquiry.

Professor Harrington commented that it was first reported that the Consortium had this on their agenda, and he asked the President if that was incorrect. The President replied that that that was incorrect because what the Consortium took up were all the articles that there were in the newspapers about what the Consortium allegedly was doing.

As a matter of clarification, President Trachtenberg described how he was approached by somebody inquiring if the University might be interested in having the Mayor as a faculty member if a pool of dollars could be raised to assure that the University was held harmless financially. He indicated that this seemed to him too rich a bounty for GW to consume all by itself and, in any case, he was aware of no interest indicated by the Mayor himself in this initiative. It seemed to him if one were to develop this, it potentially had more charm being done through the Consortium, which would serve as a host for the Mayor. The President said that he agreed to inquire at the Consortium as to the interest of the other universities in this notion. In March, his colleagues on the Consortium asked him to find out more details with no commitment, which the President agreed to do for them. On March 5th, the Washington Post reported substantially the same thing. President Trachtenberg said that he never heard about it again until a few weeks ago when he saw some reports about it in the newspapers and he received a call from the Post congratulating him for having worked this plan out which could not be further from the truth. He characterized this whole situation as a "classic media creation."

Professor Wirtz said that he wanted to make certain that if Mayor Barry were to apply for a faculty position at GW, his appointment would be handled through the standard Appointment, Promotion and Tenure Committees of the individual departments and not through any alternative approach. The President replied that that was correct if he were applying for an appointment to the GWU faculty.

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The President then introduced Bernard Demczuk, new Assistant Vice President for ~~Congressional, Federal and State Relations~~ district & community affairs. Assistant Vice President Demczuk noted that since the late 1960's and 70's he worked closely with the city government, mostly as a civil rights activist and a trade union activist to further the cause of home rule

in DC. He was the chief lobbyist of the AFL-CIO for about ten years, worked for many years as Reverend Jesse Jackson's labor director, and has served in the two past administrations of Mayor Kelly and Mayor Barry, respectively, as intergovernmental relations director. He said he was pleased to be accepted at this University as the government relations specialist for DC affairs and he invited the Senate to call upon him if it finds itself having problems with the bureaucracy in DC. He said that The George Washington University is a critical and essential element in the revitalization of the Nation's Capital and is an outstanding corporate citizen for this entire community and he said he would like to help continue that tradition.

Professor Gupta commented that he read in the Hatchet recently that the University was redesigning its logo, and he wondered if that was true. The President said that the logo would not be changed University-wide; only the logo for the Colonials needed a new design.

President Trachtenberg said he was pleased to note that in the faculty salary comparisons published in the Chronicle of Higher Education last week, George Washington University outranked almost all of the Doctoral I universities in all three ranks -- assistant professor, associate professor, and full professor. And he said he was particularly interested to see that GW was the prevailing institution in the District of Columbia in two out of three professorial ranks, above all others, including Georgetown University. Although Vice President Lehman will disaggregate the numbers, the President said it is worth noting that, while the posted spread is about $5,000 between full professors at GW and full professors at Georgetown, if we take the Law Schools out of both calculations (the Georgetown Law School being much larger than GW's), the spread in both cases is closer to $2000-$2500. In this regard, he thought we have made remarkable strides in the last decade, as well as on the issues of distribution of resources within the schools and colleges and issues of gender and other disparities within the internal system. But as long as lawyers and engineers have options outside the academy and at other universities that are more highly compensated, he thought the marketplace issues will be with us eternally. The President then wished everyone a Happy Passover and Happy Easter.

Professor Griffith asked the Registrar if he could have software developed that would enable department chairs to get regular reports of grade distributions for courses and for the department. Registrar Selinsky replied that he was certain it could be done, inasmuch as the Law School does that now.

Professor Captain recalled that the Senate was to be invited to see a University Club in the area and she wondered what progress had been made in that regard. The President said that he would take care of that matter.

ADJOURNMENT

Upon motion made and seconded, President Trachtenberg adjourned the meeting at 3:35 p.m.

Brian Selinsky

Brian Selinsky
Secretary

Distributed at the April 10, 1998, Senate Meeting by Carol K. Sigelman, Associate Vice President for Research and Graduate Studies

Revision of The George Washington University Copyright Policy

Guiding Objectives:

Allow people to own the rights to their intellectual works except when the University has a clear claim.

Distinguish more sharply between faculty/librarians and staff.

Develop a policy concerning distance education courses and courseware more generally.

Update to conform to copyright law and to make more compatible with 1996 Policy on Patents and Scholarly Works.

1. **Faculty and Librarians**

They retain the rights to their works (books, journal articles, computer software, paintings, textbooks, educational materials not developed primarily for instruction through GW, and so on) unless:

a. the work is commissioned by the University as a "work made for hire" (e.g., Professor Doe is asked to write a history of GW and is compensated for doing so);

b. the work involves "substantial use," or beyond-the-ordinary use, of university resources (e.g., Professor Doe, a physicist, makes heavy use of radio and TV facilities in order to pursue her interest in producing drug prevention videos);

c. the work is a GW course (or a substantial portion of a course) created as part of the faculty member's work responsibilities (thereby fitting the definition of "a work made for hire"), using GW resources, in which case GW has a financial interest in ensuring that it is not sold by anyone besides GW;

d. the work was produced under a sponsored project grant or contract that says that the investigator does not have a claim to any intellectual property rights.

2. **Staff**

Their works generally belong to the University if they are done as part of employment and therefore fit the definition of "work made for hire."

But a staff member can secure permission to make substantial use of University resources in order to develop a work outside the scope of employment, in which case he/she will share any royalties 50-50 with the University.

3. **Students**

If they are functioning as students, they own the rights to their intellectual properties (e.g., to research papers done for courses).

If they are functioning as employees, they are covered by the rules covering any other staff member.

Other Features:

a. Clarify whether rules for faculty, staff, etc. apply for individuals wearing multiple hats.

b. Encourage faculty and librarians to retain rights to use their own works (e.g., as course readings)

c. Better enable the library to make student theses and dissertations available

d. Clarify the concept of Substantial Use

e. Require disclosure of possible substantial use and works made for hire

f. Allow minor amendments by the Vice President for Academic Affairs with proper notification of affected individuals

ANNAUL REPORT - 1997-98

Faculty Senate
Appointment, Salary, Promotion Policy
(including benefits) Committee

1. The Committee met once a month for the Academic Year. Most of its effort was devoted to completing issues from the preceding year. One new subcommittee was formed and two items of business are still on the agenda for next year.

2. The Committee approved the work of the joint subcommittee (with PEAF) on Multi disciplinary Programs between School, and on behalf of both Senate Committees, submitted this proposal to the Senate as a resolution.

3. The report on leave without pay submitted by a joint subcommittee (with PEAF) was approved and was submitted as a resolution to the Senate by PEAF on behalf of both committees.

4. The Annual Reports on Faculty Salaries and Executive Compensation were compiled and submitted to the Senate.

5. Subcommittees were established in the preceding academic year on summer sessions compensation, part-time faculty utilization and compensation and salary differentials among Schools. The whole committee considered these hoary issues over several meetings. A report by Vice President Lehman on summer sessions is awaited at our May meeting. The members of the Committee could come to no consensus on part-time faculty and this issue is still on the Committee agenda for next year. After the usual impassioned deliberation, a majority of the members of the Committee decided that faculty salaries were a matter to be addressed within schools and, then, between deans and the Academic Vice President.

6. At the direction of the Executive Committee, a subcommittee was formed to consider benefits available to and continued utilization of the services of Emeriti faculty. This subcommittee (informally known as the geezers subcommittee) consisted of Professor Emeritus Hill, chair, and Professors Boswell, Kirsch and Park. The very active chair swung immediately into action, prying information out of this University, calling other universities to see what they offered Emeriti faculty and polling the members of the GW Society of the Emeriti. A draft resolution will be submitted to the Senate at its May meeting.

Members:

Abravanel, Eugene, Psychology
Achrol, Ravi, Marketing
Davis, D.O., Radiology
Hill, Peter P., History (Emeritus)
Jacks, Philip, Art
Katz, Irving, Mathematics
Kirsch, Arthur, Statistics
Kyriakopoulos, Nicholas, EECS
Park, Robert E., Law
Quitslund, Jon, English
West, Lynda, Teacher Prep. & Special Ed.
*Wirtz, Philip W., Management Science

For the Committee

John G. Boswell, Chair

REPORT OF THE EXECUTIVE COMMITTEE
APRIL 10, 1998
PROFESSOR LILIEN F. ROBINSON, CHAIR

I. MAY SENATE MEETING

Please note that the May Senate meeting will be held on Friday, May 8, 1998. The May Senate meeting marks the beginning of the new Senate Session (I998-99).

Election of Chairs and members of Senate Standing Committees for the 1998-99 Session will take place at the May meeting. Also Annual Reports from the Senate Standing Committees for the present Session will be received at that time. Chairs are requested to note any continuing business which would be a matter for next year's Committee. Those Senate members who are not returning as Chairs are asked to pass on their Committee files to the new Chairs.

2. ANNOUNCEMENTS

The Joint Executive Committees of the 1997-98 and 1998-99 Sessions will meet on April 24th to nominate the new Chairs and members of the Senate Standing Committees and to set the agenda for the May 8th Senate meeting. Resolutions for the May agenda should be submitted before the April 24th Executive Committee meeting.

I would like to thank all of the members of the Senate for the work that you have accomplished on behalf of our colleagues within the University. We have had a productive and successful year and your accomplishments are of enormous importance to the success of our faculty mission.

I would also like to acknowledge the administration, especially President Trachtenberg and Vice President Lehman, for their role in the resolution of a number of very complex issues.

I extend heartfelt thanks to my colleagues on the Executive Committee for their commitment to and effective execution of the challenging work of the Committee.

May I also take this opportunity to thank Doris Trone and Sue Campbell for their dedicated and excellent work on behalf of the Executive Committee, the Senate, and all the many faculty whom they routinely assist.

THE GEORGE WASHINGTON UNIVERSITY
Washington, DC

The Faculty Senate **March 30, 1998**

The Faculty Senate will meet on Friday, April 10, 1998, at 2:10 p.m. in the Elliott Room, University Club, 3rd Floor, Marvin Center.

AGENDA

1. **Call to order**

2. **Short recess for the purpose of having a group photograph taken of the 1997-98 Faculty Senate**

3. **Approval of the minutes of the regular meeting of March 13, 1998, as previously distributed**

4. **Introduction of Resolutions**

5. **Response from the Professional Ethics and Academic Freedom Committee to the Executive Committee's Request for Review of the Faculty Code Provisions of Votes of Confidence for Administrative Officials by Professor Gerald P. Johnston, Chair (Response with Appendix IV attached)**

6. **Presentation and informational discussion of a revised University Copyright Policy by Professor Sharon Lynch, Chair, Research Committee (Policy attached)**

7. **General Business:**

   (a) **Nomination for election of the Executive Committee for the 1998-99 Session (Report of the Nominating Committee to be made)**

   (b) **Nomination for election of faculty members and Chair to the Dispute Resolution Committee (nominations to be made)**

   (c) **Nomination for appointment by the President to the following Administrative Committees: Judicial System: David W. McAleavey (Chair), Neal E. Chalofsky, and Ronald Weitzer; University Hearing Board: Prabir K. Bagchi, Carol A. Kochar, Richard B. Stott, and Debra R. Sheldon; Marvin Center Program Board: Irving J. Katz; Marvin Center Governing Board: Leslie Jacobson, Irving J. Katz, Charles E. O'Rear, and Bradley W. Sabelli; Committee on Student**

Publications: John M. Artz, W. Douglas Maurer, Judith A. Plotz, Yolanda C. Oertel, Jon A. Quitslund, and Frederick Wolff

(d) Report of the Executive Committee: Professor Lilien F. Robinson, Chair

(e) Annual Reports of Senate Standing Committees (due by or before May 8th Senate meeting)

8. Brief Statements (and Questions)

9. Adjournment

Brian Selinsky

Brian Selinsky
Secretary

MEMORANDUM

TO: The Executive Committee of the Faculty Senate, Lilien F. Robinson, Chair

FROM: The Faculty Senate Committee on Professional Ethics & Academic Freedom, Gerald P. Johnston, Chair GPJ

RE: Response to the Executive Committee's Request for PEAF Review of the Faculty Code Provisions of Votes of Confidence for Administrative Officials

DATE: March 11, 1998

In the Spring of last year, in the aftermath of the vote of confidence procedures that were invoked by the faculty of the School of Engineering, President Stephen Joel Trachtenberg sent a memorandum to John Boswell, Chair of the Executive Committee, expressing his concerns about the existence of these Faculty Code procedures, and requesting that the faculty review and revise these Code provisions. *See* SJT memorandum of March 11, 1997, attached hereto as Appendix I.

Thereafter, by letter of April 21, 1997 (attached as Appendix II), John Boswell, in his capacity as Chair of the Executive Committee, wrote to Lilien Robinson, then Chair of PEAF, regarding President Trachtenberg's concerns. As the 1996-97 academic year was fast coming to a close, there was not sufficient time for last year's PEAF Committee to address these issues, and they were forwarded to this year's PEAF Committee for resolution. At several earlier meetings of PEAF there have been general discussions of the vote of confidence issues. Then, at our monthly PEAF meetings held on Tuesday, February 17, 1998, and Thursday, March 5, 1998, we addressed this subject in considerable depth. The purpose of this memorandum is to advise the Executive

Committee of the PEAF Committee's considered opinion with regard to the concerns expressed by President Trachtenberg.

The Faculty Code provisions in question appear in the Procedures for the Implementation of the Faculty Code §§ C.2.c & C.3, pps. 21-22 (1996), and state as follows:

> "C. Faculty Consultation and Recommendation in the Selection and Continuance of Academic Administrative Officers
>
> . . .
>
> "2. Deans, Associate Deans, Assistant Deans, and Similar Academic Administrative Officers
>
> . . .
>
> "c) Such appointees [deans, associate deans, assistant deans, etc.] shall hold office only as long as they retain the confidence of the faculty concerned. A formal proceeding to question the continued confidence of the faculty of a school in an academic administrative officer shall be instituted only after faculty members have made a reasonable effort to bring the substance of their concerns to the attention of such officers informally. The formal proceeding shall be conducted as follows:
>
> > 1) A petition signed by one-third of the regular, active-status members of the rank of assistant professor or higher of the faculty concerned shall be submitted to the Chair of the Executive Committee of the Faculty Senate.
> >
> > 2) The Chair of the Executive Committee shall call a special meeting of the faculty concerned for consideration of the matter. The meeting shall be held within twenty days (on which classes are regularly held in the University) of the time the petition is submitted. Notice of the meeting shall be given to all of the faculty members eligible to vote on the matter.
> >
> > 3) The Chair of the Executive Committee shall preside over the meeting. At this meeting, procedures for balloting shall be determined.

4) Within ten days (on which classes are regularly held in the University) of the first special meeting, a secret ballot of the regular, active-status faculty of the rank of assistant professor or higher shall be taken at a special meeting or by mail on the question of confidence in the administrator involved. The balloting shall be supervised by the Executive Committee of the Faculty Senate.

5) The affirmative vote of a majority of faculty members eligible to vote shall be necessary for the passage of a vote of no confidence. If the resolution passes, the Chair of the Executive Committee shall forward the results of the proceedings to the President of the University for appropriate action.

3. Vice President for Academic Affairs, Associate or Assistant Vice Presidents for Academic Affairs

Appointments to the position of Vice President for Academic Affairs or Associate or Assistant Vice President for Academic Affairs shall be made only after consultation with the Executive Committee of the Faculty Senate. The Executive Committee may submit names of proposed candidates for these positions and may advise concerning names proposed by administrative officers. Appointees to these positions shall be qualified for faculty membership by training, experience, and continued interest in teaching and research. They shall retain office only as long as they retain the confidence of the Faculty Assembly."

President Trachtenberg has expressed a number of concerns regarding these Code-sanctioned procedures. (*See* Appendix I). One is based on an asserted lack of "elementary procedural due process" that is not provided to administrators who are subject to the vote of confidence procedure. While "due process" is an important concept, its application to the subject of faculty input on the retention of administrative officials is far from clear. In today's world, whether the organization is a business, a governmental entity, a charitable enterprise, or an academic institution, employees are subject to all sorts of evaluations. Certainly faculty members, whether

tenured, tenure-tract, or contract, are subject to evaluation by both administrators and students. Deans and/or chairs evaluate faculty on an annual basis for purpose of salary increases. And students evaluate faculty on a course-by-course basis. Both administrator and student evaluations can have a dramatic impact on a faculty member, particularly ones who are tenure track but not yet tenured, or on contract faculty who are up for renewal. If the evaluations are sufficiently mediocre, the faculty member in question may not receive tenure, or may not have his or her contract renewed.

Students, for their part, are evaluated every time they take a quiz or exam, hand in an assignment, or submit a paper for a grade. It is not so unusual then that administrators be subject to evaluation by the faculty, and that faculty have some input in the reappointment or continuance of administrative officials, just as they do in the initial selection of such administrative officials. Furthermore, a pervasive lack of support for a dean by a school's faculty can create an atmosphere that is destructive both in the subject school and to the university at large. As a last resort, initiation of the vote of confidence procedures may well be beneficial to the central administration by calling attention to a serious problem that can, and often should, be rectified by the University.

While faculty evaluation of administrators may not involve the "due process" provisions of the 14th Amendment to the U.S. Constitution, such administrators are entitled to treatment that is consistent with basic notions of fairness and equity. The PEAF Committee does not believe that such considerations are violated by the Faculty Code provisions in question.[1]

First, it is important to remember that this vote of confidence procedure has only been invoked by faculty at GWU on three or four occasions in the last thirty or so years. Thus, there is

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[1] Deans and other administrators serve at the pleasure of the President and may be removed without any process. This memorandum does not attempt to address this issue.

absolutely no basis for concern regarding GWU faculty's excessive use of the vote of confidence procedures. If the converse were true, and there was a history of invocation of such procedures three or four times a year, or even once a year on average, there might be a reason to be concerned about abuse of Code-authorized faculty rights. But an average of once every decade hardly seems excessive.

Moreover, even in those limited number of situations where the vote of confidence procedures were brought into play, the administrator in question undoubtedly had many warnings about faculty concerns well in advance of the initiation of such procedures. It is likely that there were months, if not years, of faculty-expressed concerns and numerous opportunities for the administrative official in question to respond to faculty objections. An administrator, for his or her part, has a duty to make inquiry about faculty problems and concerns. In other words, invocation of Code procedures regarding a vote of confidence is hardly a spontaneous act without a long history of faculty complaints and general disapproval.

And, of course, the Faculty Code itself provides an additional layer of protection to administrators by specifying that

> "A formal proceeding to question the continued confidence of the faculty of a school in an academic administrative officer shall be instituted *only after faculty members have made a reasonable effort to bring the substance of their concerns to the attention of such officers informally*." [Faculty Code, Procedures for the Implementation of the Faculty Code, Sec. C.2.c; emphasis added].

Thus, without regard to practices or procedures that are in place at other universities with regard to faculty evaluation of administrators, it is the opinion of the PEAF Committee that the above-quoted provisions of the Faculty Code provide a reasonable basis for securing faculty input

into the process of evaluation, retention, reappointment and continuation of administrative officials in extreme cases where the problems apparent in such situations have not been adequately addressed by the administration and such concerted faculty action is therefore necessary and proper.

Finally, it is significant that many universities apparently provide for substantial involvement of the faculty in the retention of administrative officers before a dean, associate dean, etc. is reappointed to a new term. (*See* discussion below of this point.) GWU's Faculty Code, by contrast, does not specifically provide for faculty input in these reappointment situations, even though the Code does spell out a substantial faculty role in the original appointment process. *See, e.g.*, Faculty Code, Procedures for Implementation, Sec. C.2.b. The inconsistency between the significant role of faculty in initial appointments and the absence of any specific Code provisions regarding similar involvement in the reappointment process has been a faculty concern in the past. *See, e.g.*, a proposed Resolution submitted to the Executive Committee by the PEAF Committee during the 1996-97 academic year regarding an amendment to the Faculty Code to include faculty in the reappointment procedures for administrative officials. (*See* Appendix III hereto, including a December 4, 1996 memorandum from John C. Boswell to Lilien F. Robinson.)

In view of the absence of specific Faculty Code language providing for faculty input in the reappointment of administrators, the present Code sections regarding votes of confidence are the *only* provisions in the Code by which faculty are given a process to express their views on the reappointment and continuance of administrative officers. Accordingly, the PEAF Committee feels that the current provisions should be retained, as is, in the Code, and not be undercut or otherwise watered down by inclusion of alternative modifying language.

In conclusion, the PEAF Committee believes that the Faculty Code provisions

regarding votes of confidence are a significant faculty right here at GWU, made all the more important because of the absence of substantial involvement by the faculty in the reappointment of administrators such as the Academic Vice President and the Deans of the various schools. If nothing else, the PEAF Committee's review of procedures at certain other universities, discussed below, strongly suggests that the practices at GWU are unusual due to the failure to specifically provide for faculty input prior to reappointment of administrative officials. As a consequence, the PEAF Committee plans to revisit the question of the desirability of amending the Faculty Code to provide specific language for faculty involvement in the reappointment process, along lines parallel to the provisions contained in the faculty handbooks or codes of what appears to be a number of generally comparable private institutions.

Although the PEAF Committee has reached this conclusion without reliance on the practices at other universities, we did make a substantial effort to review procedures at other schools because of the President's specific request that such a review be undertaken. (*See* The President's memorandum of March 11, 1997, attached hereto as Appendix I.)

A decision was made that it would be difficult, if not impossible, for the PEAF Committee to obtain up-to-date faculty codes or handbooks from fifteen or twenty comparable institutions, and, instead, we decided to see what was available through the National Office of the American Association of University Professors here in Washington, D.C., which maintains a collection of faculty codes, handbooks, bulletins, etc. from a number of universities across the country. The better part of two days were spent reviewing these materials. Unfortunately, the review was limited by the fact that the AAUP makes little effort to assure that the materials are up-to-date. Also, the research was made difficult by the fact that terminology varies from one school to another.

Thus, at GWU the key document is a Faculty Code, but at other schools it may be a "Manual," a "Faculty Handbook" or a "Bulletin." Moreover, the extent to which certain information was not included in one of these documents may not be conclusive as to the absence of such policies at a given school, as they could well be incorporated into some other university document. Nonetheless, the review at AAUP provided some useful information which is discussed in some detail below.

In addition, the Chair of the PEAF Committee, who previously taught at Washington University in St. Louis, contacted a former colleague at that institution's law school who is presently serving as president of their faculty's governing body. The PEAF's Chair recalled that the law school at Washington University held a vote of confidence regarding the law school's dean *on an annual basis.* This procedure is apparently not mandated by any faculty code or handbook, but has been done annually at many of the schools at Washington University by custom, and is taken very seriously. There, apparently, the administrators do serve only as long as they retain the confidence of the faculty.

During the Fall of 1997, a committee of Washington University's Faculty Senate undertook a review of their dean retention procedures. A copy of the committee's report is attached as Appendix IV.[2] Of particular interest is a chart that is appended to that report which indicates that, under current procedures for review of deans at Washington University, five of their eight schools conduct an annual faculty vote of confidence, and yet the Washington University faculty code apparently does not reflect the existence of such a widespread practice on their campus. This may

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[2] While the report (Appendix IV) refers to a "Subcommittee," that description is misleading. At Washington University, the day-to-day operations of their Faculty Senate are run by the Faculty Senate Council. It was the Council that commissioned the study in question by appointment of an ad hoc committee. The attached is an interim report to the Faculty Senate Council, not a subcommittee report to a full committee.

well indicate the difficulty in documenting such procedures at other universities. Such procedures may exist, as they do at Washington University, by way of custom, without benefit of code or handbook provisions.

Other evidence of vote of confidence practices were unearthed at AAUP. For example, in an article appearing in AAUP's publication, *Academe*, entitled "College and University Government: Texas Tech University," it is reported that a resolution was adopted by the Texas Tech University's faculty that called for a vote of confidence on the administration of President Lauro Cavazos. The results -- 82 votes of "confidence;" 546 votes of "no confidence;" and 42 abstentions. *See Academe*, pps. 50-99 (May-June 1985). Yet a review of the Texas Tech's Faculty Handbook failed to disclose any written procedures for such a vote of confidence.

On the other hand, the existence of an annual faculty evaluations of administrators is disclosed in a provision from in the George Mason University Faculty Handbook, as follows:

> "2.6.2 FACULTY ROLE IN THE EVALUATION OF ACADEMIC ADMINISTRATORS
>
> Academic administrators serve at the pleasure of the President. In reviewing their performance, the President may find it useful to refer to the annual faculty evaluation of administrators, conducted under the joint auspices of the Faculty Senate and the University's Office of Institutional Planning and Research. The purposes of this annual evaluation are (I) to provide information regularly to the President and the Board of Visitors about the strengths and weaknesses of administrators as perceived by the faculty; (ii) to provide, over an extended period of time, a record of faculty opinion of the performance of administrators; and (iii) to provide individual administrators with specific suggestions for improving faculty morale and the operations of the University."

Faculty handbooks or codes at a number of other institutions apparently do not contain specific votes of confidence procedures. Interestingly, however, these schools tend to have elaborate

procedures detailing significant involvement by faculty in the initial appointment *and reappointment* of administrators. The 1988 Faculty Handbook at Duke University contains detailed procedures for review of deans and the provost in the fourth year of a five-year appointment, and a review at three-year intervals is applicable to the university president:

> "III. Review of Administration Personnel
>
> The process of review of administrators is a reasonable and useful method of ensuing institutional health. The process should develop information, not judgments.
>
> A. Deans
>
> 1. It is recommended that deans of schools be appointed for a five-year period, generally renewable once.
> 2. Each dean will be reviewed by a special committee appointed for that office by the Academic Council after consultation with the provost. The review will be initiated at the beginning of the fourth year of the appointment and will be completed in six months. A written report will be presented to the provost with copies to the president.
> 3. At the end of the fourth year, the provost should recommend reappointment, or cause to be initiated a search for a new dean. If the provost recommends reappointment of the dean, the provost will be expected to notify the committee and the president in writing of his considerations and reasons for the recommendation.
>
> B. Provost and Dean of the Medical School/Executive Vice-President
>
> 1. The same procedure for review will apply to these officers as to the deans, with the exception that the report will be presented to the president, who will deliver a copy to the Executive Committee of the Board of

Trustees.

C. President

1. A review of the president will be initiated at three-year intervals following his assumption of office. The procedure for such a review will be established by consultation between the Executive Committee of the Board of Trustees and the Academic Council.

D. Role of the Review Committee

1. The Review Committee conducts interviews with those who have worked with the administrator in question--e.g., department chairmen for deans and deans for provost, etc.

2. It invites comments in writing from all members of the faculty.

3. It interviews the person under evaluation.

4. It prepares a written report, and will provide additional and specific information requested by the president."

Review of the 1989 University of Pennsylvania Faculty Handbook also indicates the existence of provisions similar to Duke's, detailing substantial faculty involvement in connection with contemplated reappointment or extension of the provost and the deans of the various schools. *See Handbook for Faculty & Academic Administrators -- A Selection of Policies and Procedures of the University of Pennsylvania*, at p. 9 (1989). Villanova University's Faculty Handbook similarly spells out an elaborate "Protocol for the Periodic Full-Time Faculty Evaluation of Academic Deans" in the first semester of the final year of each appointment, and thereafter in the final year of each subsequent five-year term. This evaluation process is conducted through an elected "evaluation committee" consisting of five full-time faculty members and one student. When the evaluation committee has

completed its review, it prepares a written report on the performance of the dean in question. A copy of that report is furnished to the subject dean and another copy is provided to the Office of Academic Affairs. *See* Villanova University's *Faculty Handbook*, at pps. 60-62 (undated).

Also of interest is a document entitled "Manual of Information, Regulations, and Procedures" for full-time faculty at American University. That document indicates that AU's University Senate adopted "the principle of accountability of the principal administrators (from Provost/Vice President for Academic Affairs, to Vice Provosts, Vice Presidents, academic Deans and Chairpersons) . . . and that evaluation committee (more heavily weighted toward faculty and students) review the work of these same administrators every three years and advise their administrative superiors of their findings." American University's *Manual of Information, Regulations, and Procedures: Section 11, Part I -- Full-Time Faculty Personnel Procedures,* p. 6 (September 1, 1980).

In the PEAF Committee's view, consideration of the information gleaned from practices and procedures at other universities simply serves to confirm the PEAF Committee's conclusion set forth earlier in this Memorandum -- that the votes of confidence procedures set forth in the GWU Faculty Code are an important faculty right, made all the more meaningful because of the lack of any specific Code language providing for faculty input in the process for the reappointment of administrative officials.

APPENDIX I

THE PRESIDENT

March 11, 1997

To: John Boswell
Edward Grebow
Donald Lehman

CONFIDENTIAL

Fr: Stephen Joel Trachtenberg

Re: **Faculty Code**

Recent events at the University have given me cause to read the Faculty Code even more closely than I have had reason to in the past. You won't be surprised to discover that there are all sorts of sea lawyers at the University who from time to time whip out memoranda dispatched by my predecessor or his predecessor or by previous vice presidents or deans agreeing to one thing or another. Some of these memoranda articulate policy that the current administration would never concur in and that, moreover, we have no knowledge were ever acceded to by those who went before us.

This happened the other day when the Faculty Senate trotted out a document signed by a previous provost (Dr. Bright) having to do with a relatively arcane matter that had never arisen during my near-decade here. I am almost glad that they brought it up since it allowed me to make some remarks that were put into Faculty Senate minutes and which created a record in which I reinterpreted the representations of Provost Bright in a manner that I think I may be able to live with.

The inspiration for this communication is a putative faculty disputation in the School of Engineering which may lead to Dean Gideon Frieder's stepping down as dean. During the course of these excitements I have had called to my attention text in the Faculty Code which would appear, at least at a first blush reading, to be in direct conflict with even the most primitive principles of sound human resources administration, not to mention elementary procedural due process that is fair and predictable and uniform as to the parties. It is inconsistent that a Faculty Code which is so diligent in protecting these virtues on behalf of professors should have language which permits arguably arbitrary and capricious actions with regard to deans and even more senior academic officers at the University. I have in mind the language at page 23 which says that the Vice President for Academic Affairs, as well as the Associate or Assistant Vice President for Academic Affairs "... shall retain

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office only as long as they retain the confidence of the faculty assembly." Similar language would appear to also apply to deans (see page 22) where if a majority of faculty members of a school vote no confidence in a dean, the vote "shall be forwarded to the President of the University for appropriate action." You'll see at page 21, paragraph c, that deans, assistant deans and similar administrative officers shall hold office only as long as they retain the confidence of the faculty." Thus we have an arrangement that chills academic freedom and creates second class citizenship at GW for deans.

I don't know how this has escaped my attention, except that I never had occasion to read that part of the Faculty Code, thank God. But now that I have, it occurs to me that it is not in accordance with the spirit that the Code has on behalf of faculty and that needs to apply, it seems to me, across the board of the academic community. That is to say, to have academic freedom, untenured faculty, as well as tenured faculty, and assistant deans, as well as deans and vice presidents, can't have Damoclean swords hanging over them at all times and be subject to something as whimsical as a majority faculty vote without a semblance of genuine due process. We see the threat of majority tyranny. I don't know of any other university in the United States that has language like this in its Faculty Code. I can't begin to understand how our Code got this text. Somebody in the administration or the trustees was clearly asleep. If you agree, I'd like to propose that we all take a look at the language, see if any other schools have anything quite like this, and seek some alternative language that we might propose for consideration by the Senate and the Trustees.

There is a cavalier quality afforded the tenure of administrators in this Code that would seem to me to prohibit the attraction to GW of first-rate people if they were fully informed and not given other reassurances by the trustees or the president. Secondly, it compromises, I think, an administrator expected to take what could be an unpopular or bold step, however necessary it might be to the health and welfare of his or her faculty. It is designed to create a concern about pending retribution. Contrast what it takes to dismiss a dean with what it takes to dismiss a professor (see page 12) and you'll understand why I'm concerned for the integrity of the University if we permit this clause to remain in the Faculty Code.

SJT/bf

APPENDIX II

DEPARTMENT OF EDUCATIONAL LEADERSHIP

April 21, 1997

Professor Lilien Robinson
Chair
Faculty Senate Commitee on
Professional Ethics and Academic Freedom

Dear Lilien,

At this stage of the academic year, this letter is really for your successor to deal with. At our last Executive Committee meeting, President Trachtenberg raised objections about the language in the Faculty Code relating to administrators holding their office only so long as they have the confidence of the faculty. Specifically, he is concerned about the lack of any due process accorded deans. The only sentence in Procedures for Implementation of the Faculty Code, Section C, 2., Deans, Associate Deans, Assistant Deans and Similar Administrative Officers, that addresses the substance of the complaint simply says that faculty members must make a reasonable effort to bring their concerns to the attention of such officers informally. President Trachtenberg is also concerned about the various vice presidents concerned with academic affairs being subject to similar "cavalier" treatment.

Having more experience than anyone in the University in faculty disgruntlement with deans, and having seen the process from both the bottom and the top in three situations now, I agree with the President. Not only does the language not recognize the change that has taken place in due process, but, if the faculty wish to have a voice in the direction of academic affairs in their schools, the action governed by this section is too late. The language forces a confrontation. In the most recent case, the faculty were represented by their department chairs who were quite sure that they had been clear in a variety of meetings about the causes of their dissatisfaction with their dean. The dean, on the other hand, felt he was entitled to a meeting in which his "accusers" would be specific about their grievances. Had I not chosen to assume a role not specified by the Faculty Code, and had the Vice President for Academic Affairs not engaged the parties to the dispute in discussion and negotiation, the chances are that a high profile, widely publicized dispute would have been the likely result.

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We are faced here with a perplexing situation. On the one hand, faculty should not be subjected to autocratic or ineffective deans. On the other, deans cannot be expected to be effective administrators if they are subject to what can be interpreted as arbitrary votes of no confidence. The only outcome of a vote of no confidence is that it be forwarded to the president for appropriate action. In the two situations in which I have been involved as a faculty member, the action of the president was to ignore the vote. The deans in question eventually resigned, but the effect on the faculty of the School of Education was to foster long term dissention and discord.

President Trachtenberg feels that the language of the code imposes an unreasonable burden on academic administrators and forces them to take sides after problems have escalated into disputes over which they can have no control. He has asked the Executive Committee to refer the section of the Faculty Code to the PEAF Committee for two tasks: 1) to see how other Codes of Governance deal with this situation, and 2) to devise language for a process that will provide timely information about serious faculty concerns about their deans to the Vice President for Academic Affairs, and a role for this Vice President in resolving such problems. Further, he thinks shared governance would be promoted through the active involvement of the Vice President for Academic Affairs in this effort.

I forward this request with a hearty recommendation.

Sincerely,

APPENDIX III

FACULTY SENATE

MEMORANDUM

December 4, 1996

TO: Professor Lilien F. Robinson, Chair
Professional Ethics and Academic Freedom Committee

FROM: John G. Boswell, Chair
Executive Committee of the Faculty Senate

RE: Resolution to amend language of the Faculty Code to include faculty in reappointment of administrators

The Executive Committee returns your resolution with the request that the PEAF Committee investigate the constitutions of the various Schools of the University to see if this action is already part of their practice with regard to deans and assistant deans. In addition, the Executive Committee requests that you also investigate practices at our market basket schools.

Lacking "compelling reasons," it will be difficult to secure approval of this Resolution by the Board of Trustees. Evidence that faculty at comparable universities participate in decisions about reappointment of administrators would certainly buttress our case.

cc: Executive Committee

WASHINGTON, DC 20052 • (202) 994-7198

A RESOLUTION TO AMEND THE PROVISIONS OF THE FACULTY CODE WITH RESPECT TO FACULTY CONSULTATION AND RECOMMENDATION IN THE SELECTION AND CONTINUANCE OF ACADEMIC ADMINISTRATIVE OFFICERS

WHEREAS, in accordance with section IX.A.(p.15) of the Faculty Code ...the regular active faculty plays a role in decisions on the appointment...of the President, deans, department chairs...and other administrative officials with authority over academic matters; and

WHEREAS, the Faculty Code, under 'Procedures for the Implementation of the Faculty Code' Section C.1. and C.2. (pp. 19-20) provides for the active faculty participation in the appointment of department chairs and in the search, appointment, and retention of deans; and

WHEREAS, the Faculty Code also provides in Section C.3. and C.5. (p.22), for the faculty's role in the appointment and retention of the Assistant Vice Presidents, Associate Vice Presidents and Vice President for Academic Affairs, as well as an advisory and consultative role in the selection of the President; and

WHEREAS, it would be consistent with the logic and spirit of the Faculty Code to have timely faculty involvement;

NOW, THEREFORE BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

That the 'Procedures for Implementation of the Faculty Code' (pp.19-22) of the Faculty Code be amended as follows (additions underlined):

C. Faculty Consultation and Recommendation in the Selection and Continuance of Academic Officers

1. Department Chairs.

The regular, active-status faculty..... for filling vacancies or making reappointments to the post of department chair..... Normally the appointment or reappointment shall be made in accordance with the recommendation.....

2. Deans, Associate Deans, Assistant Deans, and Similar Academic Administrative Officers

(b) Appointments and reappointments to such positions...to the faculty that elected it or to the appropriate officer. In the case of reappointments, faculty consultation and recommendation shall be obtained within five years of the original appointment or reappointment .

3. Vice President for Academic Affairs, Associate or Assistant Vice Presidents for Academic Affairs

Appointments and reappointments to the position of Vice President for Academic Affairs or Associate or Assistant Vice President for Academic Affairs.....Faculty Assembly. In the case of reappointments, faculty consultation and recommendation shall be obtained within five years of the original appointment or reappointment.

4. Other Administrative Officers

(a) The faculty of a school, college, division, or other organizational unit or group of units shall be consulted for its recommendations regarding the appointment or reappointment of administrative officers.....of such recommendations. In the case of reappointments, faculty consultation and recommendation shall be obtained within five years of the original appointment or reappointment.

(b) The Executive Committee of the Faculty Senate shall be consulted for its recommendation regarding the appointment or reappointment of administrators... all the University. In the case of reappointments, faculty consultation and recommendation shall be obtained within five years of the original appointment or reappointment.

5. President of the University

(a) The Faculty Assembly shall elect a committee to advise and consult the Board of Trustees or appropriate members thereof in the selection or reappointment of a President. In the case of reappointments, faculty consultation and recommendation shall be obtained within five years of the original appointment or reappointment.

Professional Ethics and Academic Freedom Committee
November 13, 1996

Report of the Subcommittee on Dean Retention Procedures

1.0 Introduction

The Deans of the different schools/divisions at Washington University are appointed by and serve at the pleasure of the Chancellor. The Dean of a school is charged with, among other things, providing strategic vision, creating, championing, and obtaining internal and external support for new initiatives, and managing the growth and budget of the school. In discharging these responsibilities the Dean often acts with the consent and the advice of his[1] faculty in an advisory role[2]. The faculty have a responsibility to work with the Dean in assisting him to achieve common goals. The Dean and the faculty have to agree on common goals, strategies, and internal governance. An effective Dean is the prime mover and change agent and often needs to assume leadership in shepherding new initiatives and assuming an advocacy role in their implementation. On the other hand the faculty are the residual claimants to a school's excellence. They bear the risk of decisions that are irreversible and not in the best interest of the long term goals of a school. For a school to sustain its excellence and to continue on a path of progress, the faculty and the Dean must work together harmoniously. Lack of respect for the faculty by the Dean or a lack of confidence in the Dean by the faculty is a recipe for disaster in any school and university. The faculty, as guardians of the school's mission, should have confidence in the Dean's vision, judgment, fairness, and style of governance. The Dean, as the chief officer of a school, should formally review and provide feedback to all the faculty members, including the tenured faculty, every year. He should assess the progress and performance of each faculty member and that faculty member's contribution to the functioning of the school.

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[1] in this report the term "he" should be read as he/she

[2] While the tenured faculty seems to be one obvious choice to play the pivotal role of advising the Dean in most schools, some, perhaps because of size, tend to involve either the entire tenure track faculty, or a subset of the tenured faculty as in Arts&Science and Medical. We leave it up to the individual schools to more precisely define the meaning of "faculty", where it is left ambiguous in this document, in harmony with their culture and history.

The question posed to the subcommittee is this: given the dyadic and unique relationship between the Dean and the faculty, should a reciprocal review of the Dean by the faculty be conducted periodically and if so what should be the scope and significance of such a review?

2.0 The process of appointing a Dean and review

We describe in this section the current procedures that are in place for appointing a Dean and the periodic review of the Dean by the faculty.

2.1 Current Procedures and Evaluations

When a vacancy for a Dean's position arises, the Chancellor ordinarily appoints a search committee consisting of faculty, students, and alumni of the focal school as well as faculty from outside the school. The search committee identifies suitable candidates, sometimes with the help of an external search firm. After a thorough and careful review by the committee, faculty members of the focal school, central administration and the board of trustees, the committee recommends one or more candidates to the Chancellor for consideration. Deans are reviewed annually by the Chancellor. In addition faculty members at the different schools have procedures in place to review the performance of the Dean and communicate their evaluations to the Chancellor. Table 1 describes current procedures in place at the different schools at Washington University for the review of Deans by their faculties. It is clear from Table 1 that 5 of the 8 schools have very similar procedures in place while the largest school (Medical) has a very different procedure, the second largest (Arts & Science) has none, and one of the smaller schools (Social Work) doesn't seem to follow the procedure in place on a regular basis. The committee contacted the Dean and a representative of the senior faculty at each school to obtain their reactions to existing procedures and asked them for suggestions for improvement. In addition, the committee held discussions with the Chancellor. The response we got from faculty representatives indicated to us that in general faculty prefer to have a procedure in place for an annual review of the Dean. The Faculty Council of Arts & Science expressed a strong desire to institute procedures to review the Dean

periodically and the Executive Council of the Medical school seems to favor the practice that exists now. One Dean expressed strong reservations about the current system.

3.0 Recommendations

3.1 The Three Step Process

We see the appointment, review, and renewal of a Dean as comprising three distinct phases.

1. Initial appointment
2. Periodic review/feedback
3. Evaluation with intent to reappoint

3.1.1 Initial appointment

We recommend that a Dean be appointed to an initial term of five years with a possibility for renewal. A five year presumptive term eliminates some of the drawbacks of the current system. First, it is easier to attract qualified candidates when the expectation is that the appointment is for a five year term rather than a one year term. Second, a Dean with a longer horizon to implement his vision and programs could tend to make decisions with the long term well being of the school and the university in mind rather than with a short term focus that a one year term might lead to. Third, a longer term enables the Chancellor and the faculty to truly assess the impact a Dean has had through his vision, strategies, and decision making process.

3.1.2 Periodic Feedback/Review

We recommend that a representative body of the faculty (e.g., the tenured faculty, a subset of the tenured faculty or all tenure track faculty) similar to that which already exists in the various schools (see Table 1) meet once every year to discuss the state of affairs in its school. This meeting would be prefaced by an oral or a written report by the Dean outlining the initiatives he took in the preceding year and his views and outlook for the future of the school. We recommend that the faculty then discuss among themselves the status of the school and submit a written "sense

of the meeting" report to the Chancellor and the Dean summarizing their evaluations of the school's progress and achievements as well as their concerns and suggestions. We expect that such a collegial report would discuss not only the initiatives taken by the Dean but also reflect on the processes and the morale of the faculty. We envision the report not only to evaluate the past year's performance but also to present suggestions to improve the functioning of the school. We recommend that this periodic review be conducted in years two and three of the first term and in years one, two, and three of subsequent terms of appointment.

There is a concern that discussions about a Dean's performance in his absence and anonymous comments made about a Dean are demeaning to the Dean and therefore constitute an unhealthy process. It may indeed be true that an invitation to provide comments anonymously could lead to personal and vicious comments about the Dean by disgruntled faculty. On the other hand, very few faculty members (even tenured faculty) may feel comfortable in a face to face meeting with the Dean to point out deficiencies in his strategies. And given the power a Dean has over the faculty members an *even smaller* number will be likely to comment about his style of governance. Anonymity, in spite of the legitimate concern expressed above, can preserve the fidelity of a process leading to expressions of true feelings about the functioning of the school. Seeking evaluations anonymously is part of our culture: students are asked to evaluate faculty teaching, outside scholars are asked to evaluate our faculty for promotion and tenure, and senior faculty vote on junior faculty. Although the stature of the Dean and the relationship between the Dean and the faculty are different from the examples above, it seems to us that a carefully managed process can be invaluable to the faculty, to the Dean, and to the Chancellor. In addition such periodic reviews have two other important benefits. First, a Dean can take comfort when the faculty endorses his program initiatives and governance style *even when* given an opportunity to express dissatisfaction with mitigated fear of reprisals. Conversely, such a review process can reveal to the Dean suggestions and opportunities for improving his performance. Second, such periodic reports taken cumulatively will, at the end of a five year term, present a very clear picture

on the responsiveness of the Dean to the faculty input and changes that took place from year to year as a result of such feedback. These reports collectively could be important in the decision to reappoint the Dean for a subsequent term. Finally we wish to emphasize that the report is only advisory to the Chancellor.

3.1.3 Evaluation with Intent to Reappoint

We recommend that in December of the fourth year of the five year term, the Chancellor convene a review committee to advise him whether reappointing the current Dean for another five year term to begin at the conclusion of the current term is in the best interest of the school and the university. We recommend that, in constituting the committee, serious consideration be given to appointing senior faculty members who will effectively reflect the range of faculty views and opinions. It is important that the committee make every effort to seek the opinions and recommendations of all the constituents of the school, viz. the faculty, staff, students, alumni, and the central administration on the issue of reappointing the Dean. The committee should, in its deliberations, also consider the periodic reports of the faculty. In addition the committee should ask the Dean to submit a report outlining his achievements and his vision for the future. In making its recommendation, the committee should look to the future directions of the school and consider whether the current Dean is the most suitable to lead the school in that direction. The committee should be asked to submit its recommendation to the Chancellor before the end of March.

If at any point during the five year term the Chancellor, based on the periodic faculty review or for independent reasons, feels that the current Dean's performance is not adequate, he may convene a similar review committee to advise him on the desirability of retaining the current Dean for the full term.

4.0 Summary

The Dean and the faculty of a school are two pillars that support the school and its march toward excellence. They must act in harmony and with mutual trust. They must evaluate each other's performance, provide constructive criticism and suggestions, and continuously seek a higher level of performance from each other. This report examined the issues concerning the evaluation of the Dean by his faculty.

We recommend that each Dean be appointed for a term of 5 years with possibility of renewal, and that each faculty provide periodic feedback to its Dean and to the Chancellor including constructive suggestions for the future and its appraisal of the dean's past performance.

Current Procedures to Review Deans at Washington University

	Architecture	Art[1]	Arts & Science[2]	Business	Engineering	Law	Medicine	Social Work[3]
How Often?	Annual	Annual		Annual	Annual	Annual	3 or 5 years	Annual
When?	March/April	May		April	December	November	Not specified	Not specified
Is there a speech by the dean?	Yes	State of the School		State of the School	State of the School	No	Yes, to the Exec. Fac.	No
Who votes?	Tenured Faculty	All full time faculty		Tenured Faculty	All tenure track faculty	All tenure track faculty	Exec. Fac.	All tenure track faculty
Who chairs?	Chair of Tenured Com.	Chair of Policy com.		Chairman of the Ten. Fac.	Speaker of SEAS	Sen. Council Rep.	Chancellor	None; Sen. Council Rep. Calls the vote
Who calls the meeting?	Chair of Tenured Com.	Last faculty meeting		Last meeting/Chair of Ten. Fac.	By laws/ speaker of SEAS	Associate Dean	?	Only vote is taken
Discussion?	Yes	Yes		Yes	Comments are read	Yes	Report by a Sub Com.	No
Formal vote? Open or secret	Secret	Secret; after the meeting		Secret; at the meeting	By mail prior to the meeting	Secret	Secret; 3/4 majority reqd.	Secret
Who gets the results?	Chancellor	Chancellor /Dean		Chancellor	Chancellor	Chancellor	Chancellor	Chancellor
Report to the Dean by fac?	Possible	Yes		Yes	Yes	Yes	?	No

[1] Policy committee revised the procedure recently
[2] There is no procedure in place
[3] The procedure is not followed every year

3/20/98

THE GEORGE WASHINGTON UNIVERSITY

COPYRIGHT POLICY

Revised and Re-Adopted by
The George Washington University Board of Trustees
_____, 1998

[Proposed Changes from 1990 Policy shown:
New Material in redline
Deleted Material in ~~strikeout~~
Explanatory Comments in *[italicized type and brackets]*

~~1. OBJECTIVES~~ INTRODUCTION

The University encourages the creation and publication of scholarly, technical, literary and artistic works as part of its educational mission. Generally, when the Faculty, ~~Staff~~ Librarians or Students, in pursuit of their normal scholarly, ~~or~~ professional, or academic responsibilities, including normal use of the University's physical facilities, by their own initiative create copyrightable works, that copyright and any resulting royalties may be claimed by the Faculty, ~~Staff member~~ Librarian, or Student as author of the copyrighted work. However, when a work ~~is~~ qualifies as a "work made for hire" ~~(4.2.2)~~ or when "substantial use" ~~(4.1.1)~~ of University ~~facilities and~~ resources ~~are~~ is involved, as defined ~~herein,~~ in the policy below, the copyright in such work shall be owned by or transferred to the University. When Staff or Students create copyrightable works within the scope of their employment duties at the University, the copyright will generally belong to the University. For Faculty and Librarians, the University chooses not to exercise the full potential scope of its rights under the law, and only claims ownership of the copyright if the work is specially commissioned, if the work is for University course work, or if the work's creation required Substantial Use of University resources.

[As in the University's actual past practices and intent, the Policy distinguishes between works created by Faculty and Librarians and students in academic pursuits and those created by Staff and employed

Students, so that distinction is noted here. Specific reference is made here and throughout to Librarians as a separate category of University employees. Other changes are stylistic.]

~~2. DEFINITIONS~~

~~2.1 Definition of Copyrightable Materials~~

Description of Federal Copyright Law

~~2.1.1~~ Under federal copyright law, copyright protection subsists in "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." The copyright exists from the moment of creation of the work. The following categories of material, whether published or unpublished, may be subject to copyright protection: a. literary works, such as books, journal articles, textbooks, laboratory manuals, lectures, or computer programs; b. musical works, including any accompanying words; c. dramatic works, including any accompanying music; d. pantomimes and choreographic works; e. motion pictures and other audiovisual works, such as films, video-tapes, videodiscs or multimedia works; f. pictorial, graphic, and sculptural works; g. sound recordings, such as audiotapes, audio cassettes, phonorecords or compact discs; and h. architectural works.

Copyright protection does not cover the ideas or concepts embodied in a work, but rather the manner of expression. In general, as the law exists in 1998, for works created after 1978 the term of the copyright is the life of the author plus 50 years, or in certain circumstances, the shorter of 75 years from the year of the first publication or 100 years from the year of creation. ~~2.1.2~~ Subject to certain limitations, the owner of a copyright has the exclusive right to do and to authorize the following: a. to reproduce copies of the copyrighted work; b. to make derivative works based on the copyrighted work; c. to distribute copies of the copyrighted work; d. to perform the copyrighted work publicly; e. to

display the copyrighted work publicly.

[The above explanatory material is merely a summary of federal copyright law, which is not part of a policy promulgated by the University. Thus, this language should be outside the bounds of the Policy itself to allow for more frequent or flexible updating as appropriate, without having to amend the Policy. The changes to that summary are for completeness and clarity.]

COPYRIGHT POLICY OF THE GEORGE WASHINGTON UNIVERSITY

1. DEFINITIONS

~~2.2 Definition of Employee. The term "employee" shall be understood to mean any person receiving any compensation (salary, wage, stipend, fee) from the University in exchange for specified services.~~

1.1 "Faculty" means all those individuals receiving a letter of faculty appointment from the Vice President for Academic Affairs or that individual's designee, with or without compensation from the University, and whether full-time, research, part-time, visiting, or other status.

1.2 "Librarians" means all those individuals receiving a letter of appointment from the Vice President for Academic Affairs or that individual's designee to a professional librarian position, with or without compensation from the University, and whether full-time, research, part-time, visiting, or other status.

1.3 "Staff" means all those individuals, in graded or ungraded positions, or on wage account status, whether full-time, part-time, or other status, receiving compensation from the University as employees, other than Faculty and Librarians.

1.4 "Students" means all individuals associated with the University in active student status as defined by formal registration, or on approved leave of absence status, whether full-time or part-time,

whether or not holding a fellowship, a teaching assistantship, a research assistantship, or equivalent award, and whether or not receiving salary, wages, or a stipend.

~~2.3~~ 1.5 The terms "Sponsored Research" and "Sponsored Project" shall refer to research activities or other work performed by ~~a University employee for compensation~~ Faculty, Librarians, Staff or Students under sponsorship from any agency, party or parties external to the University, which research activity or other work may result in the creation of copyrightable works.

[The definitions of Faculty, Staff and Students are based on the definitions in the University Policy on Patents and Scholarly Works, and the definition of Librarians is added for full coverage. The former definition of "employee" is no longer necessary or appropriate in light of the new, more specific definitions. Other changes are for clarity.]

2. SCOPE AND ORDER OF PRECEDENCE

2.1 Scope.

This Policy applies to all Faculty, Librarians, Staff and Students of the University.

2.2 Order of Precedence.

In case any individual subject to this Policy has dual or multiple status in more than one defined category, any questions under this Policy shall be determined under the provisions applicable to the status of the individual with respect to the activity in question, if that status is clear. In case of joint or unclear activity, the order of precedence shall be to apply the provisions applicable to Faculty, Librarians, Students and Staff in that order, and in case of any remaining doubt, questions shall be resolved in a manner that gives greater rights to the individual. Any disputes under this section, as for other disputes under this Policy, shall be resolved in accordance with Section 6.4 of this Policy.

[The new Scope section is included to define the Policy's application. The Order of Precedence section is necessary because many individuals associated with the University hold more than one status, as

defined above, and each category of persons subject to this Policy has different rights under the Policy in certain respects. If creation of the copyrightable work can clearly be attributable to one such status, such as a Staff member's course paper submitted as a Student in a class unrelated to the Staff member's employment duties, the relevant status shall control, but in case of any substantial doubt or unclarity some decisional rules must apply, as stated above.]

3. CATEGORY I: INDIVIDUAL ~~RESEARCH OR OTHER~~ WORKS, THE COPYRIGHT OF WHICH WILL NORMALLY BELONG TO THE FACULTY, LIBRARIANS, STAFF OR STUDENTS OF THE UNIVERSITY

3.1 Scholarly Publications.

a. The University makes no claim of ownership of copyright in technical research articles and similar works published in scholarly journals or other outlets, unless such works are "Works Made for Hire" as defined below, or unless such works are created within the scope of a Sponsored Project under an agreement which provides for ownership of copyright by the University or a third party, in which case the Sponsored Project agreement shall take precedence. Sponsored Research, without a specific agreement for copyright, shall be considered scholarly work ~~within a faculty member's normal job responsibility~~ and the copyright in such works shall belong to the author (s), not to the University.

[Minor wording changes are to refer to new definitions, and for clarity and completeness.]

b. The University strongly encourages Faculty and Librarians who assign their copyright rights in scholarly publications to outside publishers to retain the royalty-free rights of reproduction and instructional use for themselves and for the University. Upon request, University administrators and legal counsel will provide assistance relating to assignment agreements and such retention-of-rights clauses.

[New language to help make Faculty and Librarians more aware of their rights in dealing with outside publishers, and to protect against difficulties in using works created by GW Faculty and Librarians for

their own or GW's use.]

3.2 Textbooks and ~~Published~~ Instructional Materials.

~~Unless the University specially commissions textbooks or published instructional materials, including computer and multimedia materials as "Works Made for Hire," as defined in 4.2, t~~The University makes no claim of ownership of copyright in ~~such materials~~ textbooks or "externally-oriented" published instructional materials, including computer assisted and multimedia materials, unless said materials qualify as made with Substantial Use of University resources or as "Works Made for Hire" as defined below. For purposes of this policy, "externally-oriented" shall mean that the materials were not developed primarily for instruction through the University. The University does claim ownership of all courses taught and all course materials ("courseware") developed for instruction through the University, including any courseware that are videotaped, electronically transmitted or encrypted or recorded using any media or facilities that are University property. Notwithstanding the foregoing, the University makes no claim of ownership of copyright in personal notes or other similar materials prepared by an instructor of a course for use by that instructor in the presentation of the course if copies of such notes or materials are not made available to students in the course in the form of handouts, overheads, electronic transmissions and the like, or if the totality of any such materials that are made available to students represent only a minority of the course content and could not be used to present the major portion of a course outside the University.

[Former statement of policy was somewhat unclear and too narrow. Essence of former policy is retained, but more specific and complete language is substituted.]

3.3 Theses and Dissertations.

Copyright ownership in a thesis or dissertation prepared by a Student toward degree requirements shall remain with the ~~author of such works~~ Student, provided that, unless otherwise agreed

in writing, by submitting the work for credit or degree requirements, the ~~author of such work~~ Student shall ~~grant~~ automatically be deemed to have granted a non-exclusive, worldwide, royalty-free license to the University (i) to make available for viewing to the University community through electronic or other means the entire thesis or dissertation; (ii) to ~~reproduce and distribute or otherwise~~ make available to the broader public a limited number of copies of such thesis or dissertation, for which the University will make reasonable efforts not to reproduce and distribute in excess of ten copies per year of each such thesis or dissertation; and, (iii) to make a summary or abstract available to the University community and the public by electronic means without limitation on quantity of access or copying.

[The new language is intended to make the grant of a license automatic, without requiring any special writing or agreement. In addition, this language codifies and limits the University's current practice of placing a limited number of copies of theses and dissertations on reserve in its library collection, and permitting limited copying of those materials upon request. In addition, because access to many library materials in electronic form (including through the Internet) is becoming more common, unlimited access to summaries or abstracts of theses and dissertations, and unlimited access for the University community for viewing only is included in this section.]

4. CATEGORY II: SHARED RIGHTS

4.1 Policy Statement on Prior Approval.

Faculty and Librarians may make Substantial Use of University resources in creating copyrightable works within the scope of their job duties, with any usual or necessary approvals relating to the resource usage. Staff and Students, and Faculty and Librarians intending to work outside the scope of their University duties, shall not make Substantial Use of University resources to create copyrightable works without advance permission from, and an appropriate written agreement signed by, the relevant Vice President or designee. Failure to obtain such approval shall cause any copyrightable work created to be treated pursuant to Section 4.2.

[For clarity, works created with Substantial Use of University resources are dealt with in a separate section. This section is all new language, intended to state clearly the policy on the extent of prior approval required before Substantial Use may be made of University resources for the creation of copyrightable works. Because Faculty and Librarians are much more often expected or allowed to make such uses, subject to normal departmental or other approvals or allocations of resources, advance approval is not required for every such use or work.]

~~4.1~~ 4.2 Works ~~done~~ made with "Substantial Use" of University ~~facilities,~~ resources ~~or support~~

Ownership of copyright in materials created by ~~an employee~~ Faculty, Librarians, Staff or Students with "Substantial Use" of University ~~facilities,~~ resources ~~and support staff as defined below~~ may belong to the Faculty, Librarians, Staff or Student, but shall be ~~assigned~~ transferred by the author(s) to the University, ~~as provided in Section 5 hereof~~ unless the University agrees, in writing, to waive or alter its rights ~~to such assignment~~.

[Wording changes are to use defined terms, and to use the broader statutory term "transfer," which includes an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright, rather than merely an "assignment" of rights.]

~~4.1.1~~ 4.3 Definition of Substantial Use

"Substantial Use" of University ~~facilities~~ resources ~~and support staff~~ is that use of University laboratory, studio, audio, audiovisual, video, television, broadcast, computer, computational or other facilities, resources and ~~support~~ Staff or Students which

~~a. is for the purpose of creating a copyrightable work or works;~~

~~b.~~ falls outside the scope of the ~~employee's~~ Faculty member's or Librarian's normal job responsibilities or the Student's academic program or entails uses of such resources not ordinarily available to all or virtually all similarly situated Faculty or Librarians. This concept may be flexible and

may evolve from time to time in its specific applications, and guidelines on what uses are substantial or not may be published from time to time by the Associate Vice President for Research and Graduate Studies, after consultation with the Advisory Council on Research.

~~c. has no specified agreed reimbursement to the University by the employee or student.~~

[The definition of included University resources is intended to be broad and all-inclusive, and the general term "resources" is used to include facilities, equipment, money, supplies, people and other types of resources. Former subsection a is deleted as being unnecessary and too limiting, and former subsection c is deleted as being part of an available process rather than part of a true definition. The new language in subsection b is meant to give more of a concept to the definition, rather than just an amount or extent, and to provide for more specific but flexible guidance from time to time.]

~~5.1~~ 4.4 ~~Assignment~~ Transfer of ~~Copyright~~ Rights to University.

Where a work subject to copyright is created with Substantial Use of University resources as provided ~~in paragraph 4.1~~ above, unless otherwise agreed in writing, each Faculty member, Librarian, Staff and Student author of such work shall execute an irrevocable written transfer, assignment or license to the University, in a form approved by the University, which provides for the following, unless otherwise disclosed by the Faculty member, Librarian, Staff or Student and, where relevant, agreed to by the University:

a. that the author transfers all right, title and interest in and to the copyright to the University;

b. that the work is an original work created by the author, that there are no joint authors (or that any joint authors are or have been identified in writing to the University), and that the rights in such work have not been transferred, licensed or assigned to any other entity;

c. ~~an identification of~~ that any preexisting materials, whether copyrighted or in the public domain, reflected in the subject work, are or have been identified in writing to the University;

d. that the author shall not distribute any copies of the work without the University's permission and that any copies of the work distributed by or with the authority of the author shall bear an appropriate copyright notice, and notice of the University's interest therein; and

e. that the author shall execute any further documents, and provide any additional information and cooperation necessary to obtain registration of the copyright, or to enforce the rights in the copyright.

[This section is moved from former 5.1 to place the provisions relating to Substantial Use works together. These changes allow for licenses and other forms of transfers, as well as assignments, and add clarifying language that gives some assurances regarding the integrity and effectiveness of the rights being transferred to the University.]

~~5.3.2~~ 4.5 Allocation of Royalties for Copyrights ~~Assigned~~ Transferred to the University.

Where ownership of a copyright is ~~assigned~~ transferred to the University as provided in ~~Paragraph 5.1~~ Section 4.4, unless otherwise agreed in writing, any income derived from publication, distribution, performance, display or sale of the work or derivative works, or licensing of any rights in the copyright, shall be allocated as follows:

a. University expenses associated with registration of the copyright, and any costs incurred by the University in connection with publication, distribution, performance, display or sale of copies of the work or licensing or enforcement of any rights in the work shall first be reimbursed;

b. The remainder of any revenues after payment of expenses shall be divided for the term of the copyright in the following manner:

(i) ~~60%~~ 50% to the University, or its successors or assigns;

(ii) ~~40%~~ 50% to the author(s) ~~or in equal shares to joint authors~~, or to the respective successors, assigns, heirs or beneficiaries;

~~c. In the case of audio, audiovisual, video and television works and broadcasts under Paragraph 4.1.1 in the absence of written agreement between the authors and the University which provides for the allocation of any revenues, the University shall be entitled to receive all revenue, and shall have the exclusive right and discretion in the allocation and distribution of such revenues.~~

[This section is moved to be with the type of work to which it applies. The percentage split is revised to match that in the Patent Policy, to promote equity and to eliminate any difference in result depending on which policy applies. Other minor editing is for clarity. Former subsection (c) is deleted as unnecessary, and to treat all works alike, regardless of the medium of expression.]

5. CATEGORY III: WORKS MADE FOR HIRE, THE COPYRIGHT OF WHICH WILL NORMALLY BELONG TO THE UNIVERSITY.

~~4.2 Works that are "Made for Hire"~~

5.1 Ownership of Copyright in a "Work Made for Hire"

Copyright in a "Work Made for Hire" as defined below shall be owned by the University.

[This section is moved and renumbered, and capitalized words are used to note a defined term.]

~~4.2.1~~ 5.2 Definition of "Work Made for Hire"

A "Work Made for Hire" is:

(a) a work prepared by ~~an employee (including an employed student)~~ a Staff member or Student employed at the University within the scope of employment ~~that is specially ordered or commissioned by the University for the University's use and benefit; or~~

(b) courseware developed by Faculty or Librarians for instruction through the University; or

(c) a specially-commissioned work created by a Faculty member or Librarian within the scope of employment, as set forth in a specific written agreement between the Faculty member or Librarian and the University.[1]

~~4.2.2 In the absence of a written agreement approved by the Copyright Administrator, all audio, audiovisual, video and television works and broadcasts created by an employee or student with the use of University audio, video, television and broadcasting facilities shall be treated as works made for hire.~~

[An important point that may not have been clear in the prior language is that all works created by employed Staff and Students within the scope of employment are Works Made for Hire with the copyright owned by the University. For Faculty and Librarians, the University chooses not to exercise the full potential scope of its rights under the law, and only to claim ownership of the copyright if the work is courseware developed for instructional purposes at GW, or if the work is specially commissioned by the University. The language "for the University's use and benefit" is

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[1] *Although not strictly within the scope of this Policy, under federal law and University practice a "work made for hire" may also include a work created by any non-employed individual that is specially ordered or commissioned by the University, and subject to a written agreement that it is a work made for hire, that is: (i) part of a contribution to a collective work; (ii) part of a motion picture or other audiovisual work; (iii) a translation; (iv) a supplementary work (meaning a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes); (v) a compilation; (vi) an instructional text (meaning a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities); (vii) a test, or answer material for a test; or (viii) as an atlas. It is the University's policy and practice to require transfer of copyright rights from third parties to the University for all such specially-ordered or commissioned works.*

deleted as unnecessary and unduly limiting. Former section 4.2.2 is deleted as unnecessary, especially in light of the clarification above that all works created by Staff and employed Students within the scope of employment are Works Made for Hire, and in an attempt to treat all forms of media equally.]

5.3~~.1~~ Consideration for Works Made for Hire

Where a work subject to copyright is created as a "Work Made for Hire" as defined ~~in Paragraph 4.2.2 by an employee of the University,~~ above, the normal salary or other remuneration paid to the ~~employee~~ Faculty member, Librarian, Staff member or Student shall ordinarily constitute full ~~compensation~~ consideration for the creation of the copyrighted work, unless, for specially-commissioned works under section 5.2(c), additional consideration is agreed upon by an authorized University official in writing in advance.

[This section is moved to be presented with the section to which it applies, and the language is clarified to use defined terms, to be consistent with the policy statements in section 3 above.]

6. COPYRIGHT ADMINISTRATION

6.1 Disclosure of Copyrightable Materials

Whenever any Student or Staff member intends to create a copyrightable work that is outside the scope of the academic program or employment of a Student or Staff member and that will involve use of University resources, that person shall disclose such intent to the Associate Vice President for Research and Graduate Studies (non-medical) or to the Director of the Medical Center Office of Research, or their designees, in the form and manner approved by the University, to obtain in advance a tentative decision of the relevant official on whether the work will be a Work Made for Hire or will involve Substantial Use of University resources. In addition, if at any time a Student, Staff member, Faculty member or Librarian creates a copyrightable work that is a Work

Made for Hire or involves Substantial Use of University resources, and such work or use of University resources has not received advance approval from the appropriate official, or if the basis on which an advance approval was given has materially changed, the Student, Staff member, Faculty member or Librarian shall make a disclosure to and seek a decision from the appropriate official on whether creation of the work was a Work Made for Hire or involved Substantial Use of University resources. Failure to comply with this Section 6.1 may result in the forfeiture of the individual's rights under this policy. Such cases will be reviewed by the Associate Vice President for Research and Graduate Studies and additional sanctions consistent with other Faculty, Staff, Librarian or Student policies may be imposed in accordance with such policies.

[This is new language, modeled in part on the disclosure provision in Section V of the Patent Policy, and made necessary in order to implement the Substantial Use and Work Made for Hire provisions of this Policy.]

6.2 Registration, Deposit, Disposition and Protection of Copyright

Registration, deposit, disposition and protection of all copyrights owned by the University or in which the University has rights hereunder shall be in the sole discretion of the University.

[Clarifying language to provide the University with discretion to control the manner of protection in all situations in which the University has ownership of or rights in copyrightable works.]

6.3 Copyright Administrator. The Associate Vice President for Research and Graduate Studies shall be the Copyright Administrator for the University. The Copyright Administrator shall ensure that the University's Copyright Policy ~~policy on copyright~~ is enforced and will supervise the preparation of ~~prepare~~ copyright applications, maintain records and provide advice to Faculty, Librarians, Staff and Students on copyrights and application of this policy.

[Minor editorial changes to update and use correct terms.]

6.4 Advisory Council. The Advisory Council on ~~Academic~~ Research will serve to assist the Copyright Administrator in the negotiation of copyright matters, the evaluation of ownership and the disposition of royalty income, primarily through its subcommittee, the Patent and Scholarly Works Review Panel. ~~The Advisory Council on Research will hear and decide appeals from Faculty, Staff or Students concerning decisions on copyright taken by the Copyright Administrator. The procedures and decisions of the appeal hearings shall be published by the Office of the Associate Vice President for Academic Affairs and Research~~. Disputes on copyright matters, including the interpretation of this Policy, shall be referred to the Patent and Scholarly Works Review Panel for review and recommendation. The Associate Vice President for Research and Graduate Studies (nonmedical) or the Director of the Medical Center Office of Research shall make a ruling on the dispute. Any appeal of a ruling by either official will be heard by the Vice President for Academic Affairs, who will make a recommendation to the President for his final ruling.

[The changes in this section are made to track the procedures in Section XIII of the Patent Policy.]

6.5 Periodic Review. This policy shall be reviewed at least once every four years and updated or modified as appropriate to best serve the interests of the University, and its Faculty and Librarians, Staff and Students.

[New language, derived from section XIV of the Patent Policy.]

6.6 Amendment. This Policy may be amended in minor or nonsubstantive respects by the Vice President for Academic Affairs as necessary or appropriate, and with notice to the affected groups within the University community. Substantive changes may be proposed by the Associate Vice President for Research and Graduate Studies and/or the Advisory Council on Research, and shall be reviewed by the Faculty Senate and recommended by the Vice President for Academic Affairs before presentation to the Board of Trustees for approval.

[New language, derived in part from section XV of the Patent Policy. The first sentence is meant to cover minor changes, such as in the correct titles of officers or committees.]

Originally adopted by the Board of Trustees _____.
Revised October 11, 1990; _____, 1998.

G:\LEGAL\POLICIES\COPYRIGH.V9

ADDITIONAL, PROPOSED CONFORMING CHANGES TO PATENT POLICY

1. Modify section VII.A on Scholarly Works, as follows:

All rights in scholarly books, articles and other publications, artistic creations, literary manuscripts, visual and auditory creations, and musical works, irrespective of their medium of storage or presentation, are granted to the faculty, librarians, staff and students who are the authors, ~~and need not be disclosed~~ except works for hire and works made with substantial use of University resources. The former items are meant to include computer programs, computer software, and databases that are accessory to or part of a scholarly text. Computer programs that are written for the primary purpose of educational learning and testing are excluded from classification as Inventions, Discoveries, Technologies, and Innovations. [See also The George Washington University Copyright Policy dated ~~10/11/90~~ __/__/98].

[The intent is to provide for appropriate coordination between the policies through cross-references here and in the definitions, below, so this section provides only a brief overview or summary of the relevant copyright policies. In light of the proposed new disclosure provision in the Copyright Policy in some circumstances, the previous broad reference here is deleted.]

2. Supplement definition in Section II of "Inventions", "Discoveries", "Technologies", and "Innovations" as follows:

> "Inventions", "Discoveries", "Technologies", and "Innovations" are terms that are meant to cover tangible or intangible inventions, including any process, machine, manufacture, composition of matter, or improvement thereof, which is or may be patentable, whether or not reduced to practice. These terms are also meant to cover tangible research and development results whether or not patentable. Such results include, for example, computer programs, circuit designs of all types, data bases, technical and design drawings, biogenic materials, novel varieties of plants, chemically synthesized molecular systems, and other creations. Such tangible results may also be subject to the University Copyright Policy, and to the extent of any overlap, the intent is to treat such items first under the Patent Policy, and then if not patentable to treat them under the Copyright Policy.

[Some computer programs, designs, databases and designs may not be patentable but may be copyrightable.]

3. Amend Section XV of the Patent Policy as follows:

~~Any subsequent changes to this Policy on Patents and Scholarly Works must be approved by the Faculty Senate and recommended to the Board of Trustees for its approval.~~ This Policy may be amended in minor or nonsubstantive respects by the Vice President for Academic Affairs as necessary or appropriate, and with notice to the affected groups within the University community. Substantive changes may be proposed by the Associate Vice President for Research and Graduate Studies and/or the Advisory Council on Research, and shall be reviewed by the Faculty Senate and recommended by the Vice President for Academic Affairs before presentation to the Board of Trustees for approval.

[New language, to match the amendment process proposed above for the Copyright Policy.]